Draft Sediment Management Standards Chapter 173-204 WAC Amendments
Public Comment Form

Name of Commenter:	Douglas A Hotchkiss, Port of Seattle
Version of Document Reviewed:	**Aug. 15, 2012__** Review Version (Reader Friendly) __ Official Version
Date:	October 29, 2012

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General		The application of these proposed WAC amendments have not been thought through thoroughly enough to illuminate their flaws. What is needed during the next round of revisions are detailed "case study" examples of the most complex types of sites to make sure the proposals will work in the complex and high priority areas. These case studies will need to be reviewed and worked out with the experts from the regulated community to provide accurate feedback on the consequences, intended and otherwise, of the proposals.
11	Fig 1	The human health non-cancer risk statements in the upper and lower bounds do not reflect the text in Section 561. Also the illustrated upper bound HI = < 1 is more restrictive than the illustrated lower bound HQ = <1, so they are reversed from what would be an upper and lower bound.
17	65 - 69	Sediment Recovery Zones (SRZ), this element of the SMS has proven unworkable in the past application of SMS due to the burdensome process and difficult criteria embodied in its application, and also the lack of finality for the parties involved. So now to rely on this element to bridge that most difficult gap, between an unattainable cleanup objective and the need to move forward with the sediment cleanups that we can and need to do, is a path to failure. The (SRZ) approach in its current form needs to be deleted. It is unworkable in the common situation of multiple, diffuse, uncontrollable "non-point" sources of ubiquitous regional contaminants with conservative background and PQL based cleanup levels. There is a place in a workable sediment management standard for something similar to a remodeled (SRZ). It would have to have finality for those involved, it would have to be streamlined so that the process was not burdensome and hampered by overly difficult criteria. It would probably be most useful in situations where there was a clearly defined site surrounded by background level sediments, but without a large enough clean sediment source to attain background within 10 years (from end of construction) in the "large area/low level" margins within and/or around the site. The other possibility would be where there is a large multi/sourced site with a PRP group that has accepted responsibility for cleanup, and you have municipal and local governments taking a major share, and they have been provided with long term MTCA grant funding to insure that their involvement will not create a unworkable financial burden. Need to provide the detailed complex case studies necessary to show how it will work in reality. Should convene a group of knowledgeable consultants, lawyers and local government entities. To review the case studies to insure they match the reality of how these sites will move forward.
29	283 - 285	The definition of contaminant needs to be expanded to explicitly include the concept of bioavailability and how it may vary with the geochemistry, and it may be manipulated by "treatments" (such as carbon).
34	389 – 393	The workability of the "regional background" approach laid out in this definition and discussed in the proposed changes is totally dependent on how the regional background is calculated, both the data set used and the statistics employed. Of these two, the filtering of the data set to match Ecologies definition of Regional background is the most subjective and prone to "when in doubt, be conservative", as we saw in the LDW discussions regarding establishing an area background, or local background without direct influence, and also the recent work at Bellingham and Port Angeles. The decision about individual stations being influenced by "diffuse non-point sources vs. a suspected contaminant source" is often not a straight forward decision. The mention of the constraints on regional background in the Preliminary Cost Benefit and Least Burdensome Alternative Analysis document (Ecology2012e) Section 3.5.1 "use of regional background concentrations to establish sediment cleanup standards will be limited by the proposed revisions that eliminate cost as a consideration when setting cleanup standards" also seem to indicate that it will be a very conservative approach. The regional background calculation approaches currently being considered by Ecology are too stringent to be practicable. Regional background needs to include the ubiquitous regional contaminants from multiple, diffuse, uncontrollable "non-point" sources as well as the multiple urban stormwater sources so that the approach to those sources can be covered the most appropriate regulatory vehicle, (such as the Phase II municipal permits for storm water), and leave the discrete

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		sediments sites tied to a specific location and (often historic) practice can be dealt with under this WAC. A good start would be to remove "non-point" (line 390) and "or equal to" (line 392) from this definition.
36 And many other locations	435 – 442 And many other locations	Meeting cleanup standards should remain tied to 10 years following completion of construction, not changed to 10 years following initiation, The size and complexity of many sediment sites, along with the reduced "in-water" construction season result in many (if not most) sediment cleanups taking multiple years.
37	457	"Technically possible" ….regardless of cost" needs to be removed. When the objective is as low (and in many cases unachievable) as natural background, is a policy that doesn't allow the potential action to be weighed against all the other actions that may have a positive impact on the same end point. Many of the major sediment cleanups will have at least one public entity that is a primary party. As currently defined, this approach would have people spending public and private resources well down the curve of diminishing returns, making those limited resources unavailable to other programs that could potentially have a greater positive impact on the same endpoints (i.e. human health and biological resources). "Technically practicable" means capable of being designed, constructed, and implemented in a reliable and cost effective manner." Would be a workable policy approach as it would allow the thoughtful weighing and balancing necessary in major complex decisions involving large expenditures of public resources.
xciv	1447	See comment on line # 65 – 69 above. An alternative concept that should be included is a process comparable to the Technical Impracticability (TI) waiver. That approach would provide the level of finality needed for liability allocation and insurance claims to proceed.
cxxxi	2196	See comment on line # 457 above
cxxxvi and cxxxvii	2301 -2304	It is good to allow tissue analysis, as this can allow a more direct comparison to the impact pathway of risk from fish and shellfish consumption. It will provide another method of comparing to natural and regional background that may be informative and useful in some situations. The department will need to work on some guidance regarding appropriate sampling to account for site specific variability, sampling and analytical methodology, etc. from the different available sources.
cxxxviii and cxxxix	2335 – 2339 and 2382 – 2384	For non-carcinogens the sediment cleanup objectives and the cleanup screening levels are the same. There is no effective separation in the two-tier system.
cixxv	2906 - 2910	The presumptive approach proposed in this sub-section (…570(3)(h) especially tied to "technical possibility" (see comment on page#37 above) needs to be deleted as it does not allow for site specific maximization of efficient cleanup and therefore will waste resources and have the unintended consequence of driving parties away from cooperative cleanups.
clxxxi	3007	See comment page 17 above
General	Cost analyses doc.s	The cost analyses are overly optimistic, and simplistic to capture the real impact on the business community, ports, and local governments.